Remarks

This Application has been carefully reviewed in light of the Office Action mailed June 25, 2008. Although Applicant believes all claims are allowable without amendment, Applicant has made clarifying amendments to Claims 1, 13, and 15. At least certain of these amendments are not considered narrowing, and none is considered necessary for patentability. Additionally, at least certain of these amendments are made in relation to any reference cited by the Examiner. Applicant respectfully requests reconsideration and allowance of all pending claims.

I.   The Claims Comply with 35 U.S.C. § 112

A. The Rejections under 35 U.S.C. § 112, First Paragraph, should be Withdrawn

The Examiner rejects Claims 1, 13, and 15 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Applicant respectfully traverses these rejections and discusses independent Claim 1 as an example.

In particular, the Examiner apparently rejects Claim 1 based on the language added by amendment in the RCE, namely "the alert condition being detected in response to an event notification associated with at least one of a plurality of heterogeneous application subsystems each performing an associated one or more information technology management operations that are distinct from the one or more information technology management operations performed by the other application subsystems."

To satisfy the written description requirement, a patent specification must describe the claimed invention in sufficient detail that one skilled in the art can reasonably conclude that the inventor had possession of the claimed invention. *See Moba, B.V. v. Diamond Automation, Inc.*, 325 F.3d 1306, 1319, 66 U.S.P.Q.2d 1429, 1438 (Fed. Cir. 2003); M.P.E.P. ch. 2163(I). The Examiner has the initial burden of presenting by a preponderance of the evidence why a person skilled in the art would not recognize in an applicant's disclosure a description of the invention defined by the claims. M.P.E.P. ch. 2163.III(A). "*The subject matter of the claim need not be described literally (i.e., using the same terms or in haec verba) in order for the disclosure to satisfy the written description requirement.*" M.P.E.P.

ch. 2163.02 (emphasis added). To comply with the written description requirement, each claim limitation must be expressly, implicitly, or inherently supported in the originally filed disclosure. M.P.E.P. ch. 2163(II)(A)(3)(b). In addressing the Examiner's rejection, Applicant refers to example discussions within the Specification; however, reference to these portions should not be used to limit Applicant's claims.[1]

Non-limiting support for the limitations of Claim 1 referenced by the Examiner can be found at least in Figure 1 and at Page 2, lines 8-28; Page 5, lines 11-23; and Page 7, lines 1-17 of Applicant's Specification. While the particular phrasing used in the claim may not appear explicitly in the Specification, it is implicit, and one of ordinary skill in the art would appreciate, that the Specification discloses "the alert condition being detected in response to an event notification associated with at least one of a plurality of heterogeneous application subsystems each performing an associated one or more information technology management operations that are distinct from the one or more information technology management operations performed by the other application subsystems," as recited in Claim 1.

As just one particular non-limiting example, Page 7 of the Specification states that this "configuration provides a unified alerting system and a unified command-and-control system for various enterprise components, networks or subsystems in the IT enterprise. Further, like management application 115, other enterprise components, networks and/or subsystems may populate the object repository 110 with event notifications that may be delivered according to the methodology of the present application." Page 7 then describes example separate application subsystems of network management systems, including virus detection, intrusion detection, system performance monitoring, network monitoring, application monitoring, job scheduling, and access control. Page 7 then states that "[b]y providing an integrated user interface for reporting events and receiving commands in accordance with the present disclosure, management systems can more efficiently manage an enterprise, particularly with regard to the use of audio notifications and commands."

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[1] See *Superguide Corp. v. DirecTV Enters., Inc.*, 2004 WL 253013, at *3 (Fed. Cir. 2004) (stating that the specification of a patent cannot be used to import limitations into a claim that are not recited in the claim to narrow or otherwise change the ordinary meaning of a claim term).

For at least these reasons, Applicant respectfully submits that Claim 1 complies with 35 U.S.C. § 112, first paragraph, and requests reconsideration and allowance of Claim 1 and its dependent claims. For at least certain analogous reasons, Applicant respectfully submits that Claims 13 and 15 comply with 35 U.S.C. § 112, first paragraph, and requests reconsideration and allowance of these claims and their dependent claims.

B.   The Rejections under 35 U.S.C. § 112, Second Paragraph, should be Withdrawn

The Examiner rejects Claims 1, 3-11, 13, 15, and 17-24 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant respectfully traverses these rejections.

First, the Examiner argues that "the other subsystems," as recited in Claims 1, 13, and 15 lacks proper antecedent basis. Although Applicant believes these limitations are definite as written, Applicant has made a clarifying amendment to these claims that should obviate the Examiner's issue with these limitations. For example, Claim 1 now recites the following: "that are distinct from the one or more information technology management operations performed by other application subsystems in the plurality of heterogeneous application subsystems."

Second, the Examiner alleges that it is unclear what "each" refers to in Claim 1, line 5. Although Applicant believes that it is clear that "each" refers to each "subsystem," Applicant has made a clarifying amendment to Claim 1 (as well as Claims 13 and 15) that should obviate the Examiner's issue with these limitations.

Third, the Examiner alleges that "the scope and metes and bounds" of Claim 3 are indefinite, particularly pointing to lines 2-3. Applicant submits that the language is clear. The essential inquiry pertaining to the definiteness requirement is whether the claims set out and circumscribe subject matter with a reasonable degree of clarity and particularity. Definiteness of claim language must be analyzed, not in a vacuum, but in light of: (a) the

content of the particular application disclosure; (b) the teachings of the prior art; and (c) the claim interpretation that would be given by one possessing ordinary skill in the art at the time the invention was made. M.P.E.P. ch. 2173.02. Furthermore, the test for indefiniteness under Section 112, second paragraph, is *whether "those skilled in the art would understand what is claimed when the claim is read in light of the specification*." M.P.E.P. ch. 2173.02 (citing *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1576 (Fed. Cir. 1986)) (emphasis added).

Claim 3 recites "wherein constructing an audio notification message includes identifying a portion of the message that is likely to be difficult for a user to understand and replacing the identified portion with a more easily understood synonym." First, Applicant submits that one of ordinary skill in the art would understand the scope and meaning of these limitations based on the plain meaning of the claim language. Second, Applicant submits that one of ordinary skill in the art would understand the scope and meaning of this claim language when the claim is read in light of the Specification. For example, Applicant respectfully directs the Examiner's attention to at least Page 10, line 20 through Page 11, line 9, which provide a description of example embodiments of certain features recited in Claim 3. Applicant submits that one of ordinary skill in the art would understand what is claimed when Claim 3 is read in light of the Specification.

Fourth, the Examiner argues that Claim 13 is indefinite because the phrase "operable to" is not a requirement that it is performed and considers the phrase moot. (Office Action at 4). Applicant respectfully disagrees. A system element described as "operable to" perform certain functions covers operations that the element is capable of performing, and not just operations that the element may be capable of performing. The ordinary dictionary definition of "operable" is "practicable." *See, e.g.,* The American Heritage College Dictionary, 3rd Ed., Houghton Mifflin (1997). The dictionary definition of "practicable" is "capable of being affected, done or put into practice." *See id.* Thus, elements following the term "operable to" in a particular claim element constitute operations that the claim element is capable of performing. Operations that a claim element is capable of performing are limitations because

the element is thus distinguished from the prior art that is not capable of performing the operations.

Additionally, "operable to" is a commonly used term in patent application claims and is present in claims of numerous patents issued by the United States Patent and Trademark Office. An informal search of the USPTO's website (performed September 24, 2008) returned well over 150,000 issued patents with claims reciting the phrases "operable to" or "being operable to." Applicant respectfully contends that use of the phrase "operable to" is proper. In short, use of the phrase "operable to" in claims is a practice that is both well accepted and currently supported by the PTO. To the extent that the Examiner intends to maintain his position with respect to the phrase "operable to," Applicant respectfully requests the Examiner to provide support from applicable authority, such as case law or statutes.

For at least these reasons, Applicant respectfully submits that Claims 1, 3-11, 13, 15, and 17-24 comply with 35 U.S.C. § 112, second paragraph, and requests reconsideration and allowance of these claims and their dependent claims.

II. The Claims are Allowable over the Cited Combinations of References

A. Independent Claims 1, 13, and 15 and Their Dependent Claims are Allowable over the Proposed *Ward-Lewis-Lohmann* Combination

The Examiner rejects Claims 1, 4, 13, 15, and 20 under 35 U.S.C. § 103(a) as being unpatentable over a proposed combination of U.S. Patent 5,367,670 to Ward et al. ("*Ward*"), U.S. Patent 6,603,396 to Lewis, et al. ("*Lewis*"), and U.S. Patent 5,745,692 to Lohmann II et al. ("*Lohmann*"). Applicant respectfully traverses these rejections and discusses independent Claim 1 as an example.

1. The Proposed *Ward-Lewis-Lohmann* Combination Fails to Disclose, Teach, or Suggest Each and Every Limitation Recited in Claim 1

"To establish *prima facie* obviousness of a claimed invention, *all the claim limitations* must be taught or suggested by the prior art." *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). "*All words* in a claim must be considered in judging the

patentability of that claim against the prior art." M.P.E.P. ch. 2143.03 (emphasis added); *see also In re Wilson*, 424 F.2d 1382, 1385, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970).

At a minimum, it does not appear that the cited portions of the proposed *Ward-Lewis-Lohmann* combination disclose, teach, or suggest the following limitations recited in Claim 1:

- detecting an alert condition identifying a problem with a system component, the alert condition being detected in response to an event notification associated with at least one of a plurality of heterogeneous application subsystems, each application subsystem in the plurality of heterogeneous application subsystems performing an associated one or more information technology management operations that are distinct from the one or more information technology management operations performed by the other application subsystems in the plurality of heterogeneous application subsystems;
- filtering the [detected] alert condition [identifying a problem with a system component] to determine a notification path associated with the alert condition, the notification path being determined based at least on a property of an object associated with the alert condition, the object being stored in an object repository; and
- outputting the audio notification message via the notification path.

For example, the cited portion of the proposed *Ward-Lewis-Lohmann* combination does not disclose, teach, or suggest "filtering the alert condition to determine a notification path associated with the alert condition, the notification path being determined based at least on a property of an object associated with the alert condition," as recited in Claim 1. As allegedly disclosing "determin[ing] a notification path associated with the alert condition, the notification path being determined based at least on a property of an object associated with the alert condition," the Examiner relies on *Ward*, citing Col. 5, ll. 21-27. (Office Action at 5). The cited portion of *Ward* discloses the following:

> As may be seen in FIG. 2, the path by which data accumulated during the monitoring of system components and parameters indicative of an actual or potential failure may be any one of four paths, depending on the particular type of actual or potential failure being monitored. Each system component being monitored may be referred to as an object having a number of attributes.

(*Ward*, Col. 5, ll. 21-27).

However, nowhere does this cited portion disclose, teach, or suggest any determination of a notification path associated with an alert condition, let alone "filtering the alert condition to determine a notification path associated with the alert condition, the notification path being determined based at least on a property of an object associated with the alert condition," as recited in Claim 1. Instead, the mention of "paths" in the cited portion of *Ward* relates to "the path by which data accumulated during the monitoring of system components and parameters indicative of an actual or potential failure may be any one of four paths, depending on the particular type of actual or potential failure being monitored." The path disclosed in *Ward* does not relate to any "notification path," as recited in Claim 1.

Additionally, it does not appear that the cited portions of either *Ward* or *Lewis* disclose, teach, or suggest "filtering the alert condition to determine a notification path associated with the alert condition, *the notification path being determined based at least on a property of an object associated with the alert condition*," as recited in Claim 1.

In response to the above arguments, the Examiner in the Final Office Action again pointed to column 5, lines 21-27 of *Ward*, referencing in particular the four paths that are mentioned in this cited portion. (Final Office Action at 17). However, it appears to Applicant that the four paths disclosed in the cited portion are the four paths internal to system manager 22, not any notification paths. The cited portion states, "As may be seen in FIG. 2, the path by which data [is] accumulated during the monitoring of system components and parameters indicative of an actual or potential failure may be any one of four paths, depending on the particular type of actual or potential failure being monitored." (*Ward* at 5:21-27). The data is accumulated on the four paths internal to the system manager 22 of FIG. 2.

The Examiner also for the first time referred to various portions in column 7 of *Ward*. (Final Office Action at 17-18). These cited portions simply disclose "in-band" and "out-of-band" alerts," and that an in-band alert may be communicated to the network operating system or the local system manager console and an out-of-band alert may be communicated to communication elements 54 where an alert is issued. (*See Ward* at 7:25-57). However, nowhere do the cited portions disclose, teach, or suggest "determin[ing] a notification path

associated with the alert condition, *the notification path being determined based at least on a property of an object associated with the alert condition*," as recited in Claim 1.

The Examiner apparently ignores or otherwise disregards Applicant's arguments presented in response to the Examiner's arguments from the Final Office Action (i.e., presented in the Response Pursuant to 1.116 mailed March 20, 2008, and again in by virtue of the RCE mailed April 21, 2008), simply stating that "applicant's argument has been considered and addressed in the final office action mailed on 12/20/07." (Office Action at 19). In fact, the arguments presented by Applicants, which included responses to newly-cited portions of the references and new arguments presented by the Examiner for the first time in the Final Office Action, have not been addressed. Indeed, since the arguments were presented by Applicant in response to new arguments made by the Examiner in the Final Office Action, it is impossible that Applicant's arguments were addressed in the Final Office Action.

"Where the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant's argument and *answer the substance of it*." M.P.E.P. ch. 707.07 (f) (emphasis added). Applicant respectfully submits that the Examiner did not answer the substance of Applicant's arguments with respect to the allowability of Applicant's claims under 35 U.S.C. § 101. Since the Examiner has not provided any substantive argument responsive to Applicant's prior arguments, Applicant reiterates his position as reproduced above and as presented in the prior Responses. Applicant respectfully requests that the Examiner address Applicant's arguments in the next Office Action if the Examiner does not change or withdraw the rejection or, more appropriately, issue a Notice of Allowance. Applicant paid a substantial fee for the RCE, in part to have these arguments considered and responded to. The Examiner did not do so, and therefore Applicant respectfully submits that it would be improper for the next Office Action (should one be issued) to be made final.

As another example, at least because Applicant maintains that the proposed *Ward-Lewis-Lohmann* combination fails to disclose, teach, or suggest "filtering the [detected] alert

condition [identifying a problem with a system component] to determine a notification path associated with the alert condition, the notification path being determined based at least on a property of an object associated with the alert condition, the object being stored in an object repository," as recited in Claim 1, the proposed combination necessarily fails to disclose, teach, or suggest "outputting the audio notification message *via the notification path*," as recited in Claim 1.

As another example, it does not appear that the cited portions of the proposed *Ward-Lewis-Lohmann* combination disclose, teach, or suggest "detecting an alert condition identifying a problem with a system component, *the alert condition being detected in response to an event notification associated with at least one of a plurality of heterogeneous application subsystems, each application subsystem in the plurality of heterogeneous application subsystems performing an associated one or more information technology management operations that are distinct from the one or more information technology management operations performed by the other application subsystems in the plurality of heterogeneous application subsystems*," as recited in Claim 1 as amended.

The Examiner's response to this argument appears on Pages 19-20 of the Office Action. In particular, the Examiner relies on various portions of *Ward* as allegedly disclosing these limitations. Applicant respectfully disagrees that these cited portions disclose, teach, or suggest the above-identified limitations. The components of system manager 22 of *Ward* on which the Examiner relies as allegedly disclosing the plurality of heterogeneous subsystems recited in Claim 1 do not disclose, teach, or suggest the type of heterogeneous subsystems recited in Claim 1. System manager 22, along with bus 13, asynchronous serial port 60, and intelligent disk array control device 26 are a part of a server 12 (the EISA server), as shown in Figures 1 and 3 of *Ward*. These are simply components of server 12 that appear to report to system manager 22 of the very same server 12. These are not IT subsystems that perform distinct IT management operations as recited in Claim 1. To make this distinction even more clear, Applicant has amended the independent claims to clarify that the subsystems are application subsystems.

For at least these reasons, the proposed *Ward-Lewis-Lohmann* combination fails to disclose, teach, or suggest each and every limitation recited in independent Claim 1. For at least certain analogous reasons, the proposed *Ward-Lewis-Lohmann* combination fails to disclose, teach, or suggest each and every limitation recited in independent Claims 13 and 15. Independent Claims 1, 13, and 15 and their dependent claims are allowable for at least this reason.

2. The Proposed *Ward-Lewis-Lohmann* Combination is Improper

Applicant respectfully submits that the Examiner has not provided an adequate reason, either in the cited references or in the knowledge generally available to one of ordinary skill in the art at the time of Applicant's invention to modify or combine *Ward*, *Lewis*, and *Lohmann* in the manner the Examiner proposes. Applicant's claims are allowable for at least this additional reason.

With respect to the proposed combination of *Lewis* with *Ward*, the Examiner states:

> It would have been obvious to one having ordinary skill in the art at the time of the invention was made to combine the teachings of Ward and Lewis because Lewis's teaching would allow Ward's system to filter irrelevant alarms in order to maximize performance and reliability of the system (col. 7, lines 59-65).

(Office Action at 5).

It appears that the Examiner has merely proposed an alleged advantage of combining *Ward* with *Lewis* (an advantage which Applicant does not admit could even be achieved by combining these references in the manner the Examiner proposes). However, the alleged advantage of the system disclosed in *Lewis* does not provide an explanation as to: (1) why it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention (*without using Applicant's disclosure or claims as a guide*) to modify the particular techniques disclosed in *Ward* with the cited disclosure in *Lewis*; and (2) how one of ordinary skill in the art at the time of Applicant's invention would have actually done so. Indeed, if it were sufficient for an Examiner to merely point to a purported advantage of one reference and conclude that it would have been obvious to combine of modify that reference

with other references simply based on that advantage (which, as should be evident from the case law discussed above, it certainly is not), then virtually any two or more references would be combinable just based on the fact the one reference states an advantage of its system. Of course, as the Federal Circuit has made clear that is not the law.

Applicant respectfully reminds the Examiner that "[t]he factual inquiry whether to [modify] references must be thorough and searching." *In re Sang-Su Lee*, 277 F.3d 1338, 1343 (Fed. Cir. 2002). Any "conclusory statements . . . do not adequately address the issue of motivation to combine." *Id.* The Examiner's identification of a perceived advantage of one of the references does not provide an adequate "factual inquiry." The Examiner does not give any technical reasoning why or how to combine these references, nor does the Examiner state how these systems can be combined and, if combined, would be successfully combined. This conclusory assertion surely cannot be said to be "thorough and searching."

Moreover, Applicant maintains that it is entirely unclear and unexplained how the purported advantage even relates to the teachings that the Examiner is combining. For example, even assuming for the sake of argument only that *Lewis* discloses "filtering an alert condition to determine a notification path associated with the alert condition," as argued by the Examiner, it is entirely unclear why the alleged motivation of "maximizing performance and reliability of the system" would lead one of ordinary skill in the art at the time of Applicant's invention to incorporate the teaching of "filtering an alert condition to determine a notification path associated with the alert condition," as purportedly taught in *Lewis*, into the system of *Ward*. In other words, it is not clear how the alleged advantage of "maximizing performance and reliability of the system" would even be achieved by modifying the system of *Ward* to include "filtering an alert condition to determine a notification path associated with the alert condition," as purportedly taught by *Lewis*.

Respectfully, the Examiner's attempt to combine *Lewis* with *Ward* appears to constitute the type of impermissible hindsight reconstruction of Applicant's claims, using Applicant's claims as a blueprint, that is specifically prohibited by the M.P.E.P. and governing Federal Circuit cases.

In response to the above argument, the Examiner stated in the Final Office Action, "Specifically, Lewis' teaching of filtering out and discarding irrelevant alarms would the performance and reliability of only relevant alarms being passed." (Final Office Action at 18-19) It is not clear to Applicant how this statement even relates the manner in which the Examiner is attempting to combine these references or to Applicant's claims. In the rejection, the Examiner appears to be using *Lewis* as allegedly disclosing "filtering the alert condition to determine a notification path," as recited in Claim 1. It is not clear to Applicant how "filtering out and discarding irrelevant alarms" to purportedly achieve some improved performance and reliability has anything to do with the particular teachings the Examiner is trying to combine with *Ward*.

The Examiner did not respond to this argument.

Accordingly, since the Examiner has not demonstrated an adequate reason to combine *Ward* and *Lewis* in the manner the Examiner proposes, Applicant respectfully submits that the Examiner's conclusions set forth in the Office Action do not meet the requirements for demonstrating a *prima facie* case of obviousness. For at least these reasons, Applicant respectfully submits that the proposed *Ward-Lewis-Lohmann* combination is improper. Independent Claims 1, 13, and 15 and their dependent claims are allowable for at least this additional reason.

B.   The Separately-Rejected Dependent Claims are Allowable

The Examiner rejects Claims 9, 17, and 21-22 under 35 U.S.C. § 103(a) as being unpatentable over *Ward, Lewis,* and *Lohmann* in view of U.S. Patent 6,021,262 to Cote, et al. ("*Cote*"). The Examiner rejects Claims 5-6 under 35 U.S.C. § 103(a) as being unpatentable over *Ward, Lewis,* and *Lohmann* in view of U.S. Patent 4,881,197 to Fischer ("*Fischer*"). The Examiner rejects Claim 3 under 35 U.S.C. § 103(a) as being unpatentable over *Ward, Lewis,* and *Lohmann* in view of U.S. Patent 6,037,099 to Sabourin, et al. ("*Sabourin*"). The Examiner rejects Claim 8 under 35 U.S.C. § 103(a) as being unpatentable over *Ward, Lewis,* and *Lohmann* in view of U.S. Patent 6,421,707 to Miller, et al. ("*Miller*"). The Examiner

rejects Claim 11 under 35 U.S.C. § 103(a) as being unpatentable over *Ward, Lewis,* and *Lohmann* in view of U.S. Patent 6,161,082 to Goldberg, et al. (*"Goldberg"*). The Examiner rejects Claim 7 under 35 U.S.C. § 103(a) as being unpatentable over *Ward, Lewis, Lohmann,* and *Fischer* in view of *"Official Notice."* The Examiner rejects Claim 10 under 35 U.S.C. § 103(a) as being unpatentable over *Ward, Lewis, Lohmann,* and *Cote* in view of U.S. Patent Publication No. 2001/0044840 filed by Carleton (*"Carleton"*). The Examiner rejects Claims 18-19 under 35 U.S.C. § 103(a) as being unpatentable over *Ward, Lewis, Lohmann,* and *Cote* in view of U.S. Patent Publication No. 2004/0210469 filed by Jones, et al. (*"Jones"*). The Examiner rejects Claim 23-24 under 35 U.S.C. § 103(a) as being unpatentable over *Ward, Lewis, Lohmann,* and *Cote* in view of U.S. Patent 6,185,613 to Lawson, et al. (*"Lawson"*).

Claims 3, 5-9, 10-11, 17-19, and 21-24 depend from independent Claim 1, which Applicant has shown above to be allowable over the proposed *Ward-Lewis-Lohmann* combination, and are allowable for at least this reason. In addition, Claims 3, 5-9, 10-11, 17-19, and 21-24 recite further patentable distinctions over the various proposed combinations of references.

For example, the cited portions of the proposed *Ward-Lewis-Lohmann-Sabourin* combination (which the Examiner applies against Claim 3) do not appear to disclose, teach, or suggest at least the following limitations recited in Claim 3: wherein constructing an audio notification message includes identifying a portion of the message that is likely to be difficult for a user to understand and replacing the identified portion with a more easily understood synonym.

The Examiner appears to acknowledge that *Ward, Lewis,* and *Lohmann* fail to disclose these limitations. However, the Examiner argues that *Sabourin* teaches these limitations. (Office Action at 10-11) In particular, the Examiner cites column 10, line 60 through column 11, line 8 of *Sabourin* as allegedly teaching the limitations of Claim 3. The cited portion of *Sabourin* relates to computer recognition of human speech and an associated confusability tool that appears to be the subject of the alleged invention in *Sabourin*. The cited portion discloses that there is some flexibility in the selection of the lexicon the

computer is trained to recognize. According to *Sabourin*, the confusability tool may be used to automatically find word pairings that tend to cause high confusability, and a designer can replace the relevant orthographies with alternate synonyms. *Sabourin* further discloses that the simplification of a lexicon by replacing confusable words with non-confusable synonyms can be useful by facilitating understanding across a communication medium and for creating a confusable test lexicon to rigorously test a speech recongizer.

However, nowhere does the cited portion disclose, teach, or suggest constructing an audio notification message by identifying a portion of the message that is likely to be difficult for a user to understand and replacing the identified portion with a more easily understood synonym, as recited in Claim 3. *The cited portions of Sabourin relate to computer recognition of human speech; they do not disclose, teach, or suggest constructing an audio notification message by identifying a portion of the message that is likely to be difficult for a user to understand and replacing the identified portion with a more easily understood synonym.*

In response to these arguments, the Examiner appears to substantially reiterate the Examiner's previous argument. (*See* Office Action at 20-21). However, the Examiner does not appear to address Applicant's above point that the cited portions of *Sabourin* relate to *computer recognition of human speech*; they do not disclose, teach, or suggest *constructing an audio notification message* by *identifying a portion of the message that is likely to be difficult for a user to understand and replacing the identified portion with a more easily understood synonym*, as recited in Claim 3.

For at least these reasons, Applicant respectfully requests reconsideration and allowance of dependent Claim 3.

As another example, the cited portions of the proposed *Ward-Lewis-Lohmann-Cote-Jones* combination (which the Examiner applies against Claim 19) do not appear to disclose, teach, or suggest at least the following limitations recited in Claim 19:

- the notification path comprises a multi-tiered notification path, each tier of the multi-tiered notification path identifying one or more users assigned a level of responsibility with respect to the alert condition; and
- the method further comprises assigning the level of responsibility to each of the one or more users **based upon a type of object associated with the alert condition.**

As allegedly disclosing the second limitation, the Examiner cites *Jones*, stating that *Jones* "teaches assigning the level of responsibility to each of the one or more users based upon the severity of the alert condition (i.e., type of object associated with the alert condition)." (Office Action at 15) Applicant respectfully submits that the severity of the alert condition cannot be equated with the "type of object associated with the alert condition," as it is recited in Claim 19. As purportedly disclosing the "object" recited in Applicant's claims, the Examiner relies on the objects disclosed in *Ward*, which appear to represent system components. Now, in rejecting Claim 19, the Examiner improperly modifies what is being mapped to the claimed "object." Respectfully, this type of inconsistency is no doubt the result of attempting to combine disjointed portions of too many references in an attempt to recreate Applicant's claims through hindsight. The cited portion of *Jones* does not disclose, teach, or suggest "assigning the level of responsibility to each of the one or more users **based upon a type of object associated with the alert condition,**" as recited in Claim 19.

Applicant reiterates that to establish a *prima facie* obviousness of a claimed invention, *all the claim limitations* must be taught or suggested by the prior art. "*All words* in a claim must be considered in judging the patentability of that claim against the prior art." M.P.E.P. ch. 2143.03 (emphasis added). It does not appear to Applicant that the cited portions of the proposed *Ward-Lewis-Lohmann-Cote-Jones* discloses, teaches, or suggests, at a minimum, "assigning the level of responsibility to each of the one or more users based upon a type of object associated with the alert condition," as recited in Claim 19.

In response to these arguments, the Examiner appears to substantially reiterate the Examiner's previous argument. (*See* Office Action at 21). However, the Examiner does not appear to address Applicant's point that the Examiner is improperly changing what is being mapped to the claimed "object." To reiterate, regardless of whether the "severity of the work

repair associated with a component" can be equated with an object recited in Claim 1 in isolation (a point on which Applicant's do express an opinion at this time), Applicant respectfully submits that the severity of the alert condition cannot be equated with the "type of object associated with the alert condition," as it is recited in Claim 19 and as applied by the Examiner. As purportedly disclosing the "object" recited in Applicant's claims, the Examiner relies on the objects disclosed in *Ward*, which appear to represent system components. (*See, e.g.,* rejection of Claim 1, Office Action at 5). Now, in rejecting Claim 19, the Examiner improperly modifies what is being mapped to the claimed "object" to be the "severity of the work repair associated with a component," as purportedly disclosed in *Jones*. Applicant respectfully submits that this alteration is improper. Respectfully, this type of inconsistency is no doubt the result of attempting to combine disjointed portions of too many references in an attempt to recreate Applicant's claims through hindsight. Applicant maintains that the cited portion of *Jones* does not disclose, teach, or suggest "assigning the level of responsibility to each of the one or more users *based upon a type of object associated with the alert condition*," as recited in Claim 19.

For at least these reasons, Applicant respectfully requests reconsideration and allowance of dependent Claim 19.

To avoid burdening the record and in view of the clear allowability of independent Claim 1, Applicant does not specifically discuss in this Response the distinctions recited in other dependent claims. However, Applicant reserves the right to discuss these distinctions in a future Response or on Appeal, if appropriate. Furthermore, Applicant does not admit that the various combinations of references proposed by the Examiner are possible or that the Examiner has provided an adequate reason in the cited references or in the knowledge generally available to one of ordinary skill in the art at the time of Applicant's invention to combine or modify the various references in the manner proposed by the Examiner.

For at least these reasons, Applicant respectfully requests reconsideration and an allowance of dependent Claims 3, 5-9, 10-11, 17-19, and 21-24.

III.   <u>No Waiver</u>

All of Applicant's arguments and amendments are without prejudice or disclaimer. Additionally, Applicant has merely discussed example distinctions from the reference cited by the Examiner. Other distinctions may exist, and Applicant reserves the right to discuss these additional distinctions in a later Response or on Appeal, if appropriate. By not responding to additional statements made by the Examiner, Applicant does not acquiesce to the Examiner's additional statements. The example distinctions discussed by Applicant are sufficient to overcome the Examiner's rejections.
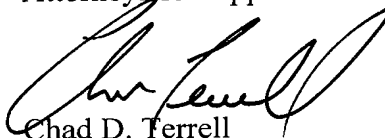
Conclusion

Applicant has made an earnest attempt to place this case in condition for allowance. For at least the foregoing reasons, Applicant respectfully requests full allowance of all pending claims.

If the Examiner feels that a telephone conference would advance prosecution of this Application in any manner, the Examiner is invited to contact Chad D. Terrell, Attorney for Applicant, at the Examiner's convenience at (214) 953-6813.

Although Applicant believes no fees are due, the Commissioner is hereby authorized to charge any necessary additional fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.
Attorneys for Applicant

Chad D. Terrell
Reg. No. 52,279

Date: September 25, 2008

CORRESPONDENCE ADDRESS

at Customer No.   **05073**